

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ALBERT B. CORTEZ,

Plaintiff,

v.

K.V.S.P. WARDEN, et al.,

Defendants.

Case No. 1:23-cv-01755-KES-CDB (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
THIS ACTION WITHOUT PREJUDICE FOR
FAILURE TO STATE A CLAIM; FAILURE
TO EXHAUST REMEDIES; AND FAILURE
TO PROSECUTE

(Doc. 11)

Plaintiff Albert B. Cortez is a state prisoner proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983. Doc. 1. The matter was referred to a United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302.

On April 26, 2024, the assigned magistrate judge screened plaintiff's complaint and found plaintiff failed to plead that he exhausted administrative remedies or otherwise plead that such remedies were unavailable. Doc. 9 at 8. The magistrate judge further found that plaintiff failed to state a claim against any named defendant, in part because plaintiff failed to identify how any defendant individually violated the Eighth Amendment, with no specific allegations directed to either the "R&R Sergeant" or the warden of Kern Valley State Prison ("KVSP"). *Id.* The court granted plaintiff 21 days to file a first amended complaint or voluntarily dismiss this action. *Id.*

1 Plaintiff failed to timely respond to the Court's screening order and on May 29, 2024, the
2 assigned magistrate judge issued findings and recommendations recommending this action be
3 dismissed without prejudice for plaintiff's failure to state a claim, failure to exhaust remedies, and
4 failure to obey the court's order directing him to prosecute this action. Doc. 11 at 4. Plaintiff was
5 granted fourteen days to file objections. *Id.* Plaintiff has not filed any objections and the time to
6 do so has passed. *See* Docket.

7 In accordance with the provisions of 28 U.S.C. § 636(b)(1), the court has conducted a *de*
8 *novo* review of this case. Having carefully reviewed the file, the court concludes the findings and
9 recommendations are supported by the record and proper analysis.

10 Accordingly, the court **ORDERS**:

- 11 1. The findings and recommendations issued on May 29, 2024, Doc. 11, are adopted in
12 full.
- 13 2. This action is dismissed without prejudice for plaintiff's failure to state a claim, failure
14 to exhaust his administrative remedies, and failure to comply with the court's orders.
- 15 3. The Clerk of Court is directed to close this case.

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18 IT IS SO ORDERED.

19 Dated: October 11, 2024


UNITED STATES DISTRICT JUDGE